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May 6, 1996

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Mr. William F. Caton  
Acting Secretary  
FCC Room 222  
Federal Communications Commission  
1919 M St., N.W.  
Washington, D.C. 20554

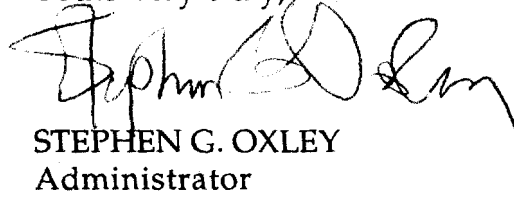
Re: Reply Comments of the Wyoming Public Service Commission in  
CC Docket No. 96-45

Dear Mr. Caton:

Enclosed herewith are the original and nine copies of the referenced Reply Comments of the Wyoming Public Service Commission. Please file the same and furnish copies to the Commissioners.

Thank you for your kind assistance with this matter. I would be pleased to answer any questions concerning the enclosed material.

Yours very truly,

  
STEPHEN G. OXLEY  
Administrator

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Before the

FEDERAL COMMUNICATIONS COMMISSION  
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MAY 7 1996

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CC Docket No. 96-45

In the Matter of )  
Federal-State Joint Board on )  
Universal Service )

### REPLY COMMENTS OF THE WYOMING PUBLIC SERVICE COMMISSION

The Wyoming Public Service Commission (WPSC) hereby submits its reply comments pursuant to the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking and Order Establishing a Joint Board issued in the above-captioned matter on March 8, 1996 (NPRM), as amended.

1. **Introduction. The persistence of costs.** For a variety of demographic and geographical reasons, the cost of providing essential basic telecommunications service in Wyoming (the type of service intended to be supported by the universal service fund required under Section 254 of the federal Telecommunications Act of 1996 (Act)), is relatively high. This fact is neither a regulatory aberration nor a technological anomaly; but is rather the natural result of providing telecommunications service to small population centers separated by long distances. The federal high cost fund has recognized this fact, and Wyoming has received, measured on a per line basis, higher levels of support in the past from the fund than have other states.

These costs are persistent in that they cannot realistically or fairly be defined out of existence. They will continue to exist no matter what definitions are applied to them. They will present relative cost challenges to any telecommunications technology applied. They will continue to be economic determinants of the quality and nature of telecommunications service available in Wyoming whether or not the federal universal service fund addresses them adequately. If the universal service fund mechanism fails to do so, Wyoming will experience the various cost-driven evils which the universal service fund is intended to prevent, as described in Section 254(b). The costs will persist and they will drive the deployment and availability of telecommunications technology in Wyoming. Therefore the WPSC must -- and the FCC should -- oppose costing models and other universal service fund-related proposals which have the surface appearance of "fairness" or "symmetry" or "ease of application" but which produce absurd results. Any appealingly simple solution which denies the economic fact of the costs which Wyoming and other high cost states will continue to experience should be rejected out of hand by the FCC. If this idea is challenged as being overly results-oriented, the WPSC would remind the reader that the Act mandates results which allow higher cost areas to continue to participate fully in the telecommunications and information marketplace.

**2. Avoiding "numbers games."** The WPSC has reviewed Section 254 of the Act and has found no Congressional intention to use the mechanism of a federal universal service fund to deny the existence of high cost problems or to prevent the fund from addressing them. The policy of Section 254 is very clear. Subsection 254(b)(3) requires that ". . . consumers in all regions of the Nation, including . . . those in rural, insular, and high cost areas, should have access to

telecommunications and information services, . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." Subsection 254(b)(4) requires that "all providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." These obligations could be cleverly diminished or avoided but that would be unconscionable.

**a. Counting heads in the classroom.** Some have proposed that support for education under the universal service fund be limited or governed by relative pupil counts. This should be rejected as a variation of the "numbers game" advocated by those who would prefer to deny or artificially reduce the responsibility of providing adequate technology to the nation's schools. The need for modern educational technology is not a function of how many pupils are in a specific class, school or geographic area. It is a function of our commitment to educational excellence which is clear in the Act. Counting heads is a way to guarantee the creation of technological desert islands. The incidental benefit of such an approach is that it reduces the overall cost of supporting education in higher cost, low population density areas -- a result sought by some but a result that shortchanges students unlucky enough to live in disfavored places. The Act is not supposed to allow this kind of false economy. This may be characterized as a "small state" issue, but it is one clearly intended to be covered by the Act.

**b. Limiting the size of the universal service fund.** Some interests have attacked the universal service fund concept by proposing that it be subject to an overall dollar limit or artificial cap. It is an expression of financial interest by those

who either do not stand to benefit from the fund or who do not wish to cooperate in fulfilling the policy of the Act regarding universal service. The cost of making the universal service fund work as intended is, or should be, firmly based on the number of dollars needed to produce the desired result. To say otherwise denies the usefulness of the universal service fund concept and trivializes it. If there must be a cap, it should be "no more than is absolutely necessary to carry fully into effect the policies set forth at Section 254(b) of the Act." If excessive growth in the universal service fund is experienced, as some expressly fear, it can be dealt with when, and if, it actually occurs. A thoughtfully established fund should have none of these problems.

The FCC should make it clear that Congress intends that the entire nation make progress in telecommunications and that it is going to require some financial support to make sure that the resulting telecommunications and information system is useful to all. When Subsections 254(b)(4) and (5) require that providers of telecommunications services make equitable and nondiscriminatory contributions to preserve universal service and that universal service support mechanisms be specific and predictable, that in no way implies that they should be capped to limit their usefulness. The WPSC also notes, in this regard, that Subsection 254(b)(5) also requires both federal and state support mechanisms to be "sufficient" to the task.

**3. Costing models.** Manipulation of the costing models used to identify the amount and destination of universal service fund support presents the opportunity for additional attacks on the integrity of the universal service fund. It is attractive to some to define away or diminish the overall amount of necessary universal service fund support by the "scientific" approach of manipulating the

model on which these vital decisions are based. It is also attractive to some to skew the result, diverting support from those areas of greater need to those areas in which the proponent has greater interest. If an otherwise unconscionable result can be presented as merely the “fallout” result of the application of a particular model, that masks to a degree the model’s impropriety and flaws. Again, the analysis of various models must be not only based on their logical appeal but also on the results that they produce.

Wyoming freely admits that it has a very substantial interest in the model to be applied and in its results. Our motives are neither obscure nor hidden. We have a substantial concentration of the highest cost to serve exchanges in the entire nation. This is a long established fact and not the result of a study developed to produce additional funds for the state and its telecommunications service providers. If the chosen model denies this financial and operational reality, the people of Wyoming will suffer, contrary to the intention of the Act. An improper model will virtually guarantee that no competitive markets would develop in most parts of Wyoming. The WPSC is thus vitally concerned that models identify costs accurately and not try to make them go away.

**a. Dealing with wide variations in cost.** The cost of providing service in rural or “insular” areas can vary widely among small company study areas. The currently proposed proxy formulas (e.g., the benchmark costing model) generally do not capture or quantify these variations adequately. Disturbingly, model results sometimes do not bear a relationship to the actual cost of providing service in rural high cost areas. This is undesirable for a number of reasons. It destroys financial incentives for the deployment of upgraded infrastructure, it lessens the

commitment to service in rural areas, it retards the advent of competition and it insures that the disparity between urban and rural telecommunications will at least be maintained and that it probably will worsen.

The long term solution is a single, sophisticated costing model of universal national applicability which accurately and uniformly identifies these costs and provides for their efficient recovery. We believe that further research directed toward the development of such a model should be a priority of the FCC as it moves forward in refining the funding mechanisms for universal service. (The WPSC believes that a joint federal-state task force should be instituted to work toward such a model. It could take, as one of its primary tasks, the development of methods for estimating local service costs accurately on a deaveraged basis.) However, until such a model is developed (and we have to date seen none which accomplish this completely), the FCC should allow small rural companies to use cost-based methodologies of identifying universal service funding requirements. Maintaining this philosophy also furthers the goals of the Act in that they provide continued encouragement to smaller companies to install new facilities to continue to qualify for universal service fund support. The Act's requirement that such funding be explicit can be easily satisfied by removing the support component from rates and recovering it through a universal service mechanism.

**b. Support for the Maine-Vermont comment.** The utility regulatory commissions of Maine and Vermont (joined by the Montana, Nebraska, New Hampshire, New Mexico, Utah and West Virginia commissions) filed initial comments which made a number of well founded observations about universal service (the Joint Comment). The Joint Comment observed that the universal

service fund system should be driven by costs rather than by rates, and that proxy models have not become sufficiently mature to serve as the basis for distributing universal service funds. The drafters wisely observe that basing universal service funding on rates could give unwholesome incentives to the states to distort the system through the manipulation of rates which can be more easily changed than costs.

The Joint Comment noted, as does the WPSC, that cost models should identify and use the actual costs of providing service to the specific area in question. It notes that any proxy model will, in some cases, assign costs which do not reflect the actual costs experienced by the local telecommunications service provider. In that circumstance, the Joint Comment advocates the use of a transition period to avoid the shock of immediate cuts in assistance.

Above, the WPSC advocates the further study of proxy models. In light of this, the WPSC supports the Joint Comment list of recommended modifications to the benchmark costing model as it is studied further. Our comments above also support the Joint Comment as it observes that factors which do not drive costs should not be made a part of a universal service fund cost model. It seems to the WPSC that this observation is axiomatic, but experience has shown, as we note above, that some who do not favor the concept of universal service support will attempt to introduce concepts which weaken the support and decrease the level of responsibility. We note, for example, that even the larger local service providers in Wyoming do not serve urban centers large enough to significantly defray some of the costs of serving other, more rural areas. Any eligibility criteria based simply on company size thus do not bear a relationship to the reality of the critical underlying



costs. (We also note that high cost exchanges of companies which do not meet an arbitrary size test for universal service fund support could be insulated from competition contrary to the express policy of the Act against the creation of such barriers.)

In general, the WPSC supports the proposals contained in the Joint Comment. We applaud its continued emphasis on cost-based realism and its determination to eliminate or reduce the ability of extraneous factors to distort the legitimate support needs of those customers in truly high cost exchanges. We agree that models must be subjected to further study and considerable refinement before they should be allowed to influence telecommunications service rates.

As this Reply Comment is being prepared, the WPSC has had the opportunity to review the reply comment prepared by the states making the Joint Comment. The WPSC supports it and has indicated its support on that document.

**c. Increasing the Subscriber Line Charge.** Some have proposed increasing the Subscriber Line Charge (SLC) as part of this proceeding. This is in one sense little more than an attempt to make the least elastic market bear the most costs. Regarding the SLC, there is disagreement about the nature of the benefit derived from the local loop by interexchange carriers; and that debate is likely not to be settled in this proceeding. However, raising the cost of local service by an SLC adder will not encourage a more universal telecommunications system in the United States. Rather than adding to the fixed charges borne the local loop, we should allow market pricing mechanisms to determine how those costs are best recovered.

One observer (Bell Atlantic) has argued that reductions in Carrier Common Line Charges should be flowed through dollar-for-dollar to the customers of interexchange carriers. Such reductions, if driven by increases in the SLC, should appropriately be passed on to customers.

**d. Maintaining the integrity of the Universal Service Fund.** The WPSC believes that it would be a mistake to consider the universal service fund mechanism to be the only telecommunications fund for the execution of social policy. It has the maintenance and enhancement of universal service as its goal, including the advanced technological needs of schools, libraries and health care providers. Its client base is broad as is its base of contributors. It is not a means tested program and could not be if it were to remain “universal” in intent. Therefore, other support mechanisms and initiatives such as Dial Equipment Minutes (DEM) weighting, Long Term Support, Link-up America and Lifeline should be continued separately. State programs, such as Wyoming’s statutory program for the assistance of 911 and E911 programs, should also not be considered with respect to the universal service fund. Other telecommunications programs have neither the same purpose nor the same constituency. Because of their poor “fit” with universal service funding, they should not be the subject of a forced consolidation with it.

**4. Enhanced assistance to education, libraries and health care.** One of the major achievements of the Act is its recognition, at Sections 254(b)(6) and (h) that educational institutions, libraries and health care providers should have special

consideration because of the special uses to which they put telecommunications technology for the public good.

a. **Technological flexibility.** Wyoming's schools need access to advanced telecommunications and information technology to provide the needed range of courses and resources. This means that all Wyoming schools should have access to high speed video, data and voice services because our schools are, like our population centers, widely separated. The geographic challenges faced by our schools put them in an ideal position to make wide use of telecommunications technology. The key to making these services available to education is to take advantage of all of the efficiencies that technology has to offer. We should not, for example, be tied to land lines where microwave or satellite communications would be more efficient and offer more educational value for the money. In planning for the allocation of fund support, the maximum flexibility should be allowed so that one particular technology does not crowd out others which might come to be of more value in the future. Clearly, educators should be able to work with their state utility regulatory commissions to optimize their use for universal service funds.

Because high end technology is clearly within the purview of the federal universal service fund, fund monies should be available for upgrading voice, video and data services. The FCC should encourage service providers to make fund-supported services and technology available on a flexible basis so that new technology, once adopted and applied, need not remain the only option simply because changeover costs effectively block the ability to convert to newer technology at a reasonable price. Again, the WPSC notes that basing the responsibility to provide discounts and universal service fund support on "student counts" or other

simple number-based criteria must be avoided. A student in a small rural class is just as deserving as a student in a large urban class. In education, it is clear that the Act did not intend to enforce false economies of scale.

**b. Distribution of funds to the states.** Education in the United States has a strongly local character. Just as telephone exchanges have markedly individual needs and characteristics which make it impossible to address all of their problems on a national "one-size-fits-all" basis, so do the various challenges of K-12 education make it impossible for accurate, efficient and cost-saving universal service fund solutions to be made solely at the national level. The situation is similar for libraries and health care providers which also face unique problems driven by geographic and demographic considerations. Therefore, the WPSC supports the comments of NYNEX and the Joint Comment states which advocate that funding be distributed to the states for schools, libraries and health care providers. Such a system would be able to draw on the local knowledge of unique local conditions which must be clearly understood before assistance can be adequately and accurately targeted. The federal universal service fund could easily contain broad parameters which would minimize or eradicate the possibility of abuse in such a system. It would not be equally easy to craft an exclusively federal system as free from problems.

**c. The most basic problem.** The overriding challenge in this area is to facilitate connection to advanced services and to make them affordable in the longer term. Often the need is clearly understood locally long before the wherewithal to act is available. The Act clearly directs us to work to solve this problem. The federal and state jurisdictions should work together to insure the success of this program.

State commissions are the most effective vehicle for addressing local service and service offering anomalies which could prevent full utilization of modern technology. The Act envisions a federal-state partnership in telecommunications. No place is it more easily seen than here.

**5. Further refinement of federal/state cooperation.** The Act does not set up an exclusively federal universal service mechanism but clearly requires sustained cooperation with the states. The WPSC believes that continuing federal/state cooperation and information sharing should be institutionalized as the universal service fund mechanism develops. States have an important role to play in making the universal service concept efficient, fair and easily administered. The dialogue should not be limited to a Joint Board but should be ongoing and should clearly survive the promulgation of universal service fund rules. For example, whoever administers the federal fund should have the benefit of a state advisory committee to assist in the proper administration of the fund. We would not expect the federal government to remain silent if it believed that its state partners in the telecommunications endeavor were in need of advice and counsel on how to improve the working of critical funding mechanisms.

**6. Administering the universal service fund.** An unbiased administrator is essential to the success of the universal service fund. The administering entity must know the telecommunications industry well and be capable of making the critical day-to-day operating decisions which will make the fund function properly. It must work with extremely diverse service providers in collecting and disbursing funds in an accurate and timely manner. This calls for fairness and it requires the care and knowledge that come from years of experience.

In our Initial Comments in this docket, we advocated that the universal service fund be administered by the National Exchange Carrier Association (NECA) -- an organization with much relevant experience which could be directly applied to administering the fund. Our observations are grounded in part in the practical experience that the WPSC has gained in dealing with the legislative, administrative and regulatory challenges of setting up Wyoming's state universal fund under the Wyoming Telecommunications Act of 1995. We reiterate our original support for NECA as administrator of the federal universal service fund; and we additionally note that the states making the Joint Comment, described above, similarly support reasoned reliance on NECA in this capacity.

Respectfully submitted this 6th day of May, 1996.

PUBLIC SERVICE COMMISSION

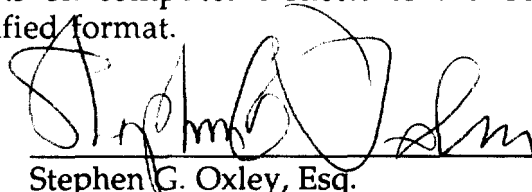
  
STEVE ELLENBECKER, Chairman

  
DOUG DOUGHTY, Deputy Chairman

  
KRISTIN H. LEE, Commissioner

## CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on May 6, 1996, I served true and complete copies of the within and foregoing Initial Comments of the Wyoming Public Service Commission in the above-captioned matter by [a] transmitting the original and nine copies of the Initial Comments to the Acting Secretary of the Federal Communications Commission by Federal Express, [b] transmitting an additional copy thereof to the International Transcription Service by Federal Express, [c] serving copies thereof on each state member of the Federal-State Joint Board and on each person otherwise named on the service list attached to the Notice of Proposed Rulemaking in the above-captioned matter by depositing the same in the United States Mail, first class postage prepaid, and [d] by transmitting by Federal Express the Initial comments on computer diskette to the Commission's Common Carrier Bureau in the specified format.

A handwritten signature in black ink, appearing to read "Stephen G. Oxley", is written over a horizontal line.

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